

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

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| BONGAM INVESTMENT CORPORATION | : | |
| | : | |
| v. | : | |
| | : | Civil Action No. CCB-09-965 |
| PIONEER SHIPPING LOGISTICS, INC., et al.: | : | |
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MEMORANDUM

Plaintiff Bongam Investment Corporation (“Bongam”), a Maryland corporation based in Upper Marlboro, Maryland, has sued defendants Pioneer Shipping Logistics, Inc. (“Pioneer Shipping”), a New York corporation that regularly transacts business in Maryland, and Eagle Systems, Inc. (“Eagle Systems”), a Maryland corporation based in Baltimore, Maryland, for breach of contract and conversion of property. The suit concerns a shipment of a container of custom-made leather chairs that Bongam had ordered from China in late November 2008 and had contracted with Pioneer Shipping to have delivered to its Forestville, Maryland facility. Under the terms of the arrangement, Pioneer Shipping was to act as domestic freight broker and forwarder for the container once it arrived in the United States, arranging for its transportation from the Seagirt Marine Terminal at the Port of Baltimore (“Port of Baltimore”) to Bongam’s Forestville facility within three business days after receiving payment from Bongam, which allegedly occurred on or about January 6, 2009. (Compl. ¶¶ 7 & 9.) Pioneer Shipping hired Eagle Systems to perform the actual delivery of the container. (Mot. to Remand at Ex. E.)

Although the container arrived at the Port of Baltimore on December 20, 2008, and was apparently picked up by Eagle Systems on December 30, it was not delivered to Bongam’s Forestville facility until January 27, 2009, and even then was not fully delivered, because

Bongam's staff was unable to unload all of the goods from the container before Eagle Systems left the facility and took the container – with Bongam's goods still aboard – to a warehouse owned by Pioneer Systems. The container still remains at this warehouse, despite Bongam's repeated demands for delivery.

Bongam filed suit against the defendants in the Circuit Court for Baltimore County on February 13, 2009, and Eagle Systems, after being served process, filed a notice of removal to this court on April 15, 2009, to which Pioneer Systems consented. Bongam now moves to remand the case back to the Circuit Court for Baltimore County.

Defendants maintain that federal jurisdiction is proper here because the case involves loss or damage to goods transported from a foreign country into the United States, and is therefore governed by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706 *et seq.*, which establishes federal jurisdiction over shipments occurring “between a place in . . . the United States and a place in a foreign country to the extent the transportation is in the United States.” 49 U.S.C. § 13501(1)(E); *see Shao v. Link Cargo (Taiwan) Ltd.*, 986 F.2d 700, 704 (4th Cir. 1993) (citing *Adams Express Co. v. Croninger*, 226 U.S. 491 (1913)). Bongam contends, however, that its claims arise from a purely intrastate shipment that occurred after the shipment from China into the United States, and therefore the Carmack Amendment does not apply. *Cf. Goliger Trading Co. of N. Y. v. Chicago & N. W. Ry. Co.*, 184 F.2d 876, 879 (7th Cir. 1950) (noting that, when a disputed shipment is intrastate, the Carmack Amendment does not apply).

Whether a particular shipment falls within the jurisdictional provisions of the Carmack Amendment is a question of fact to be decided by the court. *See Beautifax, Inc. v. Puerto Rico Marine Mgmt., Inc.*, 611 F. Supp. 537, 544 (D. Md. 1985). If the court finds that the intention

formed prior to shipment was for the goods to be carried by a continuous or unified movement to a final destination beyond the port of discharge, then the Carmack Amendment may apply to the intrastate portion of that shipment. *See Sompo Japan Ins. Co. of America v. Union Pacific R. Co.*, 456 F.3d 54, 63-68 (2d Cir. 2006) (finding the Carmack Amendment to apply to a domestic shipment that was part of a “single continuous shipment of goods originating in a foreign country and destined for the United States”); *Swift Textiles, Inc. v. Watkins Motor Lines, Inc.*, 799 F.2d 697, 699-701 (11th Cir. 1986) (articulating the “intent” test and applying it to a domestic shipment); *see also United States v. Erie R. Co.*, 280 U.S. 98, 101-102 (1929). Whether a separate bill of lading was issued may also be relevant. *See Shao*, 986 F.2d at 703; *Swift Textiles, Inc.*, 799 F.2d at 699-700; *but see Sompo Japan Ins. Co. of America*, 456 F.3d at 61-62 (questioning the *Swift* court’s application of the bill of lading requirement).

Here, the facts as pleaded are insufficient to make a determination as to the intended final destination of the goods prior to their shipment from China, precluding resolution of the applicability of the Carmack Amendment to Bongam’s claims at this time. It would also be helpful to know whether any additional relevant paperwork exists. Accordingly, the motion to remand will be denied without prejudice, and a scheduling order will be issued to permit discovery to go forward. *See Shao*, 986 F.2d at 702 (remanding a case to the district court for further determination of Carmack Amendment applicability).

A separate Order follows.

June 19, 2009

Date

/s/

Catherine C. Blake

United States District Judge